

Supreme Court, U.S.
FILED

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No.

CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

RENÉ SCHNEIDER, *et al.*,

Petitioners,

v.

HENRY KISSINGER, *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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(i)

QUESTION PRESENTED

Does disarray in the lower courts' application of the political question doctrine in cases involving violations of individual rights require this Court's clarification?

PARTIES TO THE PROCEEDING

René Schneider, Raul Schneider, and José Pertierra are Petitioners in this case.

Henry A. Kissinger and the United States of America are Respondents in this case.

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PETITION FOR WRIT OF CERTIORARI

René Schneider, Raúl Schneider, and José Pertierra petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit.

OPINIONS BELOW

The opinion of the Court of Appeals (Pet. App. 1a-21a) is reported at 412 F.3d 190 (D.C. Cir. 2005). The district court's original memorandum opinion (Pet. App. 22a-59a) is reported at 10 F. Supp. 2d 251 (D.D.C. 2004). The orders of the Court of Appeals denying rehearing and rehearing *en banc* (Pet. App. 62a-65a) are unpublished.

STATEMENT OF JURISDICTION

On June 28, 2005, the Court of Appeals affirmed the judgment of the District Court. On September 9, 2005, the Court of Appeals denied the petition for rehearing and rehearing *en banc*. This Court has jurisdiction pursuant to 28 U.S.C. § 1254 (2000).

CONSTITUTIONAL PROVISION

Article III, section 2 of the U.S. Constitution provides: "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority."

STATEMENT OF THE CASE

A. Factual Background

This lawsuit seeks to hold Henry A. Kissinger and the United States accountable for their role in the murder of a Chilean government official in 1970. Am. Compl. ¶ 15. Henry Kissinger, who at that time was National Security Advisor — a non-Cabinet post — plotted with Chilean nationals to “neutralize” General René Schneider, who was then Commander-in-Chief of the Chilean Army. Am. Compl. ¶¶ 12, 15, 22. At the direction of Dr. Kissinger, CIA agents established contacts with Chilean co-conspirators, provided them with monetary support and weapons, and encouraged their plans to eliminate General Schneider. Am. Compl. ¶¶ 25-37, 39-40. On October 22, 1970, armed men, using weapons identical to those delivered by a U.S. agent to Chilean co-conspirators, shot and fatally wounded General Schneider. Am. Compl. ¶¶ 40, 43. After the killing, CIA operatives in Santiago attempted to conceal U.S. involvement in General Schneider’s death, retrieving payments made to Chilean co-conspirators and dumping weapons in the ocean. Am. Compl. ¶¶ 44-45. Dr. Kissinger’s intentional acts were the proximate cause of General Schneider’s death. Am. Compl. ¶¶ 15, 43.

B. Procedural Background

On September 10, 2001, plaintiffs René Schneider and Raúl Schneider (General Schneider’s sons), and José Pertierra (the Administrator of General Schneider’s estate) filed a Complaint alleging summary execution; torture, cruel, inhuman or degrading treatment; arbitrary detention; wrongful death; assault and battery; and intentional infliction of emotional distress in the

United States District Court for the District of Columbia against defendants Henry A. Kissinger, Richard McGarrah Helms,¹ and the United States of America.² Plaintiffs invoked the jurisdiction of the District Court under 28 U.S.C. §§ 1331, 1350, and 1367 (2000). On November 9, 2001, defendants submitted a Motion to Dismiss Plaintiffs' Complaint pursuant to Fed. R. Civ. P. 12(b)-(1) and 12(b)(6).

In a memorandum opinion on March 30, 2004, the District Court granted defendants' motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), concluding that this case was nonjusticiable because the plaintiffs' claims presented a political question committed to the Executive branch. Pet. App. 58a.

Plaintiffs appealed to the United States Court of Appeals for the District of Columbia Circuit on December 27, 2004. Plaintiffs argued that their claims did not present a nonjusticiable political question because they did not challenge United States policy, but rather addressed the wrongfulness of a criminal homicide planned and directed by the defendants.

On June 28, 2005, the Court of Appeals affirmed the dismissal of the claims for lack of jurisdiction under Fed. R. Civ. P. 12(b)(1). The Court held that the political question doctrine rendered the claims nonjusticiable

¹ After Richard Helms' death, plaintiffs dismissed their claims against him in an Amended Complaint on November 12, 2002.

² Plaintiffs alleged claims based on previously secret documents that the Executive branch declassified and released pursuant to legislation enacted by Congress. See Intelligence Authorization Act for Fiscal Year 2000, Pub. L. No. 106-120, § 311, 113 Stat. 1606 (1999) (codifying the Hinchey Amendment, which required the submission of a report detailing the activities of the CIA in Chile).

because the "lawsuit raises policy questions that are textually committed to a coordinate branch of government." Pet. App. 8a.

Plaintiffs filed a timely petition for rehearing and rehearing *en banc* on August 11, 2005, arguing that the panel erroneously used precedent and that Article III of the Constitution grants courts the power and duty to provide relief to the plaintiffs, which was denied on September 14, 2005. Pet. App. 62a-65a.

REASONS FOR GRANTING THE PETITION

The political question doctrine warrants this Court's clarification. Lower courts inconsistently apply the doctrine to similar factual situations. Some courts avoid the doctrine entirely, relying on different means to determine justiciability, while other courts invoke the doctrine without a "case-by-case inquiry" or a "discriminating analysis of the particular question posed." *See Baker v. Carr*, 369 U.S. 186, 210-11 (1962). This expansive interpretation creates a situation in which some courts dismiss controversial cases as nonjusticiable political questions and preclude the adjudication of violations of individual rights.

Lower courts need guidance in their application of the political question doctrine because some courts apply the doctrine in a manner that threatens Article III judicial review, which is integral to the separation of powers. The doctrine has also been applied inconsistently to prevent individuals from bringing claims against U.S. officials, which conflicts with the U.S. commitment to hold governmental officials accountable for violations of individual rights in conformity with universally recognized standards of international law. The lower courts' unpredict-